

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	

**COMMENTS OF
THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

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SUMMARY

NRECA welcomes the Commission's efforts to explore targeting Connect America Phase II support in an inclusive manner. Electric cooperatives are uniquely positioned and qualified to utilize Phase II support to provide broadband to unserved and underserved rural areas at speeds that exceed the current minimum requirements of 4/1 Mbps. NRECA recommends that the Commission increase the broadband benchmarks to a minimum of 10/1+ Mbps.

While NRECA believes that a higher 25/5 Mbps speed standard should be considered by the Commission as a new benchmark for funding within the next 10 years, the Commission's rulemaking process must be used to adjust the Phase II obligations on a prospective basis to avoid investment risk. NRECA also supports the Commission's proposal to provide accelerated Phase II support after network completion is validated.

NRECA believes that in some instances, deployment to 100% of locations may not be achievable and is therefore not opposed to a slight 5 percent reduction in the requirement along with a corresponding reduction in support. Additionally, flexibility to substitute a certain percentage of unserved locations within partially served census blocks for locations within funded census blocks could enable more efficient network deployments.

NRECA opposes the proposal to exclude areas that are served by subsidized competitors because it has the practical effect of protecting incumbent providers from competition and would prevent bidders in a competitive bidding process to provide 10/1+ Mbps to such locations. In addition, the Commission should rely on competition rather than self-certification to protect consumers in unserved and underserved areas. Self-certifications should not be used to make an area ineligible for competitive bids for Phase II support and should not trump the voice of a community.

NRECA also strongly believes that the areas for which a rural broadband experiment formal proposal is submitted should be removed from a price cap carrier's state-level commitment. By removing the right of first refusal, the Commission would enable a price cap carrier, the applicant submitting the rural broadband experiment formal proposal and any other eligible provider, to participate in the competitive bidding process for model-based support for that area. This process should drive down costs and preserve scarce universal service funds. Competing for a chance to provide voice and broadband services in unserved and underserved locations is a once in a generation opportunity for entities such as electric cooperatives to close the digital divide. A more inclusive approach to solving this issue will allow for a better allocation of scarce universal serve funds at relatively higher broadband service performance levels.

Finally, NRECA supports the Commission's proposal to use a multi-round auction. In selecting winning bidders, a service offering of at least 25/5 Mbps should be deemed to be a service that "substantially exceeds" the Commission's standards. In order to select among competing bidders that otherwise offer comparable service standards, NRECA recommends that the Commission additionally use the ratio of the speed offered to the requested support. NRECA also recommends support for geographic coverage across state lines and bidding credits for areas that are located in persistent poverty counties and geographically sparsely populated areas.

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**COMMENTS OF
THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

The National Rural Electric Cooperative Association (“NRECA”) hereby respectfully submits comments in response to the Federal Communications Commission’s (“Commission”) Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹

NRECA welcomes the Commission’s efforts to explore additional approaches in targeting Connect America Fund Phase II (“Phase II”) support so that recipients can deploy broadband into locations which are currently unserved or underserved. NRECA believes that this can be achieved with the costs being properly distributed in an equitable manner. NRECA also believes that “[a]ll Americans should have access to broadband that is capable of enabling the kinds of key applications [that drive broadband adoption] . . . including education (e.g.,

¹ *Connect America Fund*, WC Docket No. 10-90 *et seq*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54 (rel. June 10, 2014) (“*FNPRM*”). The comments contained in this filing represent the comments and recommendations of the NRECA, but not necessarily the views of any particular member of NRECA.

distance/online learning), health care (*e.g.*, remote health monitoring) and person-to-person communications (*e.g.*, VoIP or online video chat with loved ones serving overseas).”² Providing support for a period of ten years to service providers receiving support pursuant to the Phase II competitive bidding process³ will bring needed investment in broadband-capable infrastructure to unserved and underserved areas. However, to realize such investment, it is imperative that a price-cap carrier’s right of first refusal should be precluded in those areas where credible evidence of competition for broadband deployment exists - such as in cases where electric cooperatives and other entities submit formal proposals for funding rural broadband experiments in those areas.

I. INTRODUCTION

NRECA is the national service organization for more than 900 not-for-profit rural electric utilities that provide electric energy to approximately 42 million people in 47 states or approximately 12 percent of electric customers. Rural electric cooperative infrastructure covers 72% of the land mass of the United States. NRECA’s members include approximately 65 Generation and Transmission (“G&T”) cooperatives and 840 Distribution Cooperatives.⁴ Rural electric cooperatives were formed to provide safe, reliable electric service to their owner-members at the lowest reasonable cost. Rural electric cooperatives are dedicated to improving the communities in which they serve. Management and staff of rural electric cooperatives are active in rural economic development efforts. NRECA’s members rely on a mix of wireline and

² *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 at para. 87 (2011) (“*USF/ICC Transformation Order*”, *aff’d sub nom.* In re FCC 11-161, ___ F.3d ___, 2014 WL 2142106 (10th Cir. May 23, 2014).

³ *FNPRM* at para 35.

⁴ The G&T cooperatives generate, purchase, and transmit power to the Distribution Cooperatives.

wireless telecommunications services to support and maintain their rural electric distribution systems, including broadband and smart grid applications, and to support their commitment to spur economic development in the communities they serve.

Today's digital divide shares many attributes with the "electricity divide" that existed in the 1930s where nine out of 10 rural homes were without electric service.⁵ Through the assistance of federal government action such as the of the Tennessee Valley Authority Act in 1933 and through financial assistance from programs of the 1933 Rural Electrification Administration, rural electric cooperatives formed to close the "electricity divide" and by 1953, more than 90 percent of U.S. farms had electricity.⁶ As stated by the Commission:

Like electricity a century ago, broadband is a foundation for economic growth, job creation, global competitiveness and a better way of life. It is enabling entire new industries and unlocking vast new possibilities for existing ones. It is changing how we educate children, deliver health care, manage energy, ensure public safety, engage government, and access, organize and disseminate knowledge.⁷

Then, as today, there is a demand in unserved and underserved locations for services essential to community development, economic growth and prosperity and educational attainment. Then, as today, there is a need for federal assistance to achieve parity between the "haves" located in urban areas and the "have-nots" located in more rural areas. In order for electric cooperatives to meet the broadband demands of their customers,⁸ electric cooperatives today require access to Phase II support to help offset the high-cost of deploying networks into

⁵ In price cap territories alone, 3.6 million locations are unserved by 10 Mbps/768 kbps. See, *Wireline Competition Bureau Releases Connect America Cost Model Illustrative Results Using Higher Speed Benchmark*, Public Notice (DA 14-833) (rel. June 17, 2014).

⁶ A visual depiction of how electric cooperatives electrified rural America is available at <http://www.nreca.coop/wp-content/plugins/nreca-interactive-maps/coop-growth/index.html>.

⁷ *Connecting America: The National Broadband Plan*, at xi (rel. March 16, 2010).

⁸ The "customers" of an electric cooperative are its member-owners.

the unserved and underserved parts of their service territories and to also close the digital divide.⁹

Electric cooperatives are uniquely positioned¹⁰ and qualified to utilize Phase II support to provide broadband to unserved and underserved rural areas at speeds that exceed the current minimum requirements of 4 Mbps downstream and 1 Mbps upstream.¹¹ Electric cooperatives have the resources, customer relationships, the expertise, and the commitment to provide broadband where no other providers have deployed such services to date.¹² The economic, social, political and educational well-being and vitality of their communities depends on access to affordable, high-quality, broadband services.¹³ Electric cooperatives also serve in 327 of the nation's 353 "persistent poverty counties" (93%). Of the 42 million Americans served by

⁹ NRECA wishes to point out that electric cooperatives often borrow and receive loan guarantees from the USDA's Rural Utilities Service. These cooperatives are prohibited from using revenues from their electric business to subsidize telecommunications services.

¹⁰ A few electric cooperatives, however, may be prohibited by state statute from providing lines of business other than core electricity services.

¹¹ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Amended by the Broadband Data Improvement Act*, Report, 25 FCC Rcd 9556, 9558, at ¶ 5 (2010) (establishing the 4 mbps/1 mbps benchmark for broadband).

¹² Redundant fiber rings to electric substations not only support smart grid initiatives, but may also be used as middle-mile scalable broadband delivery platforms to which fiber-to-the-premises infrastructure can be connected. See, for example, reply comments filed by BARC Electric Cooperative, an electric cooperative located in rural Virginia, which has planned and engineered a fiber-to-the-premises ("FTTx") project across its service territory. Challenged by a lack of density and difficult terrain, BARC seeks Phase II support to supplement its access to low-interest long-term debt, enabling the cooperative to reduce the high capital costs associated with a FTTx project (available at <http://apps.fcc.gov/ecfs/document/view;jsessionid=sBLFTf2TPVKfNGQFp6lTfGyQ8qlmG6LnbHnBsZhmhp1hh2F39f0d!1565474435!74404766?id=7521098120>).

¹³ Access to broadband capability has become essential to economic and civil life in the United States, *Connecting America: The National Broadband Plan*, at xi (rel. March 16, 2010).

cooperatives, an estimated 4 million live in persistent poverty counties.¹⁴ Electric cooperatives are interested in providing broadband services to meet the demand of their members – the customers to which they provide electric service – and to meet the demands of the communities that they serve.

The Commission has recognized that electric cooperatives are important new participants in bridging the digital divide.¹⁵ NRECA urges the Commission to take an inclusive approach in its process for the allocation of Phase II support. By allowing all potential providers to compete for Phase II support, the Commission can fulfill its statutory obligation of ensuring that all consumers have access to advanced telecommunications and information services.¹⁶ No entity that is willing to help bridge the digital divide should be left out of the Commission’s process. This is especially true with respect to electric cooperatives that cover 72% of the nation’s land mass and which have very strong community ties.¹⁷

II. THE COMMISSION SHOULD REQUIRE NEW DEVELOPMENTS OF BROADBAND-CAPABLE INFRASTRUCTURE TO MEET INCREASED SPEED STANDARDS

The Commission seeks comment on its proposal to increase the minimum broadband downstream speed benchmark for universal service funding to 10 Mbps and whether to increase

¹⁴ An interactive map depicting the “persistently poverty counties” served by electric cooperatives is available at <http://www.nreca.coop/wp-content/plugins/nreca-interactive-maps/persistent-poverty/index.html>.

¹⁵ *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-98 at para. 5 (rel. July 14, 2014) (“*Rural Experiments Order*”).

¹⁶ 47 U.S.C. § 254(b)(3).

¹⁷ Included are entities such as electric cooperatives intending to provide the required services directly or those entities that decide to have third party relationships or subsidiaries with telecommunications providers, while other cooperatives may want to rely in part on contractual arrangements for the supply of telecommunications by leasing or other arrangements.

the upstream speed requirement to something higher than 1 Mbps.¹⁸ NRECA believes that the Commission should increase the broadband downstream and upstream speed benchmarks for universal service funding to a minimum of 10 Mbps downstream and 1+ Mbps upstream.¹⁹

While these benchmarks are both lower than what many consumers in more urban areas have today²⁰ and are lower than the average speeds recognized by the Commission as necessary for awards of support respecting rural broadband experiments,²¹ NRECA believes that these benchmarks serve as a good starting point for bridging the digital divide for the near-term future. Streaming video for use by homes, business, farms and schools and libraries, both upstream and downstream, should be part of the universal service broadband infrastructure requirements for the 21st century.²² Those residing in rural unserved and underserved areas should not be denied

¹⁸ FNPRM at paras. 138-148.

¹⁹ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Tenth Broadband Progress Notice of Inquiry, FCC 14-113 (rel. August 5, 2014) at Table 2 (suggesting that a 1 Mbps upstream speed may not accommodate all household types); *Federal Communications Commission, Office of Engineering and Technology & Consumer and Governmental Affairs Bureau, 2014 Measuring Broadband America Fixed Broadband Report* (average subscribed speed is now 21.2 Mbps).

²⁰ See, “*New Broadband Map Data Shows Progress, But Work Remains*,” Anne Neville, Director, State Broadband Initiative (Aug. 5, 2014) (“[W]hile nearly all urban communities (99.6 percent) had access to download speeds of at least 10 Mbps as of the end of 2012, just under 84 percent of rural communities did. And while 88 percent of rural communities had access to download speeds of 6 Mbps, only 83 percent of rural communities had access to 6-Mbps download speeds and 1.5 Mbps upload speeds), available at <http://www.ntia.doc.gov/blog/2013/new-broadband-map-data-shows-progress-work-remains>.

²¹ *Rural Experiments Order* at para. 26 (Out of the \$100 million for funding, \$75 million is provided for projects offering at least one plan at 25/5 Mbps).

²² While “universal Netflix” may not be the policy goal of universal service, today’s users of broadband services demand ever increasing access to information and bandwidth-dependent applications.

an opportunity to have broadband facilities built out to them that meet the upstream and downstream speeds enjoyed by persons living in more urban areas.

Providing broadband service into unserved and underserved areas, many of which may have unique service challenges, whether physical or economic, will require innovative solutions. While electric cooperatives have the poles, conduits and rights of way, and related infrastructure already in place to expeditiously develop high speed broadband delivery services, in some rural areas, there exist significant constraints to running fiber to all locations. NRECA believes that Phase II recipients should be allowed to satisfy their obligations using any technology or combination thereof to meet the performance standards for Phase II. Mobile, wireless services such as LTE or satellite technology meeting the Phase II requirements, while maintaining the service and pricing standards established by the Wireline Competition Bureau for the offer of model-based support, should be eligible for Phase II support.²³ No entity that is willing to help close the digital divide should be excluded from eligibility for such support.

III. THE COMMISSION SHOULD CONSIDER REQUIRING REASONABLE EVOLVING STANDARDS AND INCENTIVES FOR FASTER BROADBAND DEPLOYMENT

As technology changes over the next decade, end-users expectations and demands will likely also change. Accordingly, the Commission seeks comment on whether and how it should monitor and adjust the Phase II obligations to accommodate these changes, including setting today, concrete going-forward requirements such as a 20 mbps standard at a certain number of locations by a certain year.²⁴ NRECA believes that a higher speed standard such as 25 Mbps downstream and 5 Mbps upstream should be considered by the Commission as a new benchmark within the next 10 years. Demand for such speeds already exists in communities served by

²³ *FNPRM* at para 154.

²⁴ *FNPRM* at 157-158.

NRECA's members.

However, NRECA wishes to point out that the Commission should neither set an artificially low speed standard today nor impose a flash-cut obligation in the future to accommodate changing technology and potential customer demand. To do so would likely create more investment risk on the very entities that are contemplating whether they today should seek to provide broadband services in unserved and underserved locations. It is also unrealistic to expect that speed standards and consumer expectations will not continue to evolve. In order to balance the investment risk and potential future service quality expectations, NRECA believes that the Commission should utilize its rulemaking process to adjust the Phase II obligations on a prospective basis after full consideration of the record as to how such changes could negatively affect a recipient's ability to continue offering such services, its expansion efforts, or other material factors that are in the public interest.

NRECA also supports the Commission's proposal to provide financial incentives for recipients of Phase II support to accelerate their network deployment.²⁵ For example, the Commission suggests that for price cap carriers making a state-level commitment, all or some fraction of remaining support could be paid out over six months after network completion is validated. Such a payment provision should incentivize recipients to deploy and narrow the digital divide expeditiously.

In addition, to ensure a level and consistent playing field, the Commission should offer the same incentives for state-level recipients as it does for recipients under the competitive bidding process. Moreover, NRECA believes that any accelerated payment mechanism be made only after the build out has been validated by USAC or other entity designated by the

²⁵ *FNPRM* at 161.

Commission and that the accelerated payout does not unreasonably jeopardize the fund.

IV. THE COMMISSION SHOULD PROVIDE FLEXIBILITY IN DEPLOYMENT OBLIGATIONS

The Commission seeks comment on whether to permit all Phase II recipients to specify that they are willing to deploy to less than 100 percent of locations in their funded areas, with associated support reductions and if so, whether 95% or some other percentage should be required and whether the recipient should be required to specify the number it intends to deploy at the time funding is first authorized or instead within sometime after being awarded the support.²⁶ NRECA believes that in some instances, deployment to 100% of locations may not be achievable. Accordingly, NRECA is not opposed to a slight 5 percent reduction in the percentage of locations supported along with a corresponding reduction in support.²⁷ In addition, NRECA recommends that the Commission provide the recipient with the flexibility to adjust its deployment commitments for up to half of the time required to meet its build out requirements.

The Commission also seeks comment on allowing Phase II recipients to substitute some number of unserved locations within partially served census blocks for locations within funded census blocks.²⁸ NRECA supports this type of flexibility. Electric cooperatives are located in diverse locations where their electric generation, transmission and distribution lines are located to serve their members and the communities in which their members live. As such, their service areas may cover a portion of a partially served census block where there are unserved locations.

Furthermore, the flexibility to substitute a certain percentage of unserved locations within

²⁶ *FNPRM* at 165-66.

²⁷ To the extent that a NRECA member believes that the rural broadband map is inaccurate, they intend to utilize the Commission's formal process to contest whether certain census blocks are served or unserved by voice and broadband. See *Connect America Fund*, Report and Order, 28 FCC Rcd 7211 (2013).

²⁸ *FNPRM* at 167-172

partially served census blocks for locations within funded census blocks could enable more efficient network deployment and bring service to unserved consumers in those partially served census blocks. However, NRECA believes that such substitutability should not be permitted for purposes of cream-skimming or other anti-competitive reason and that overbuilding should be avoided where possible. The existence of a unique geographic service footprint or other purpose should be demonstrated before the Commission allows the substitution.

V. THE COMMISSION SHOULD NOT EXCLUDE AREAS FROM PHASE II SUPPORT THAT ARE SERVED BY SUBSIDIZED COMPETITORS AND SHOULD NOT RELY ON SELF-CERTIFICATION BY CARRIERS TO PREVENT ABUSE

The Commission asks whether it is the most efficient use of the Connect America budget to provide support in geographic areas where there is another facilities-based terrestrial provider of fixed residential voice and broadband services that meets its current requirements – whether that competitor is subsidized or not.²⁹ Currently, areas are ineligible for support if they are located in areas already served by an unsubsidized competitor, but they are eligible for support if they are served by a subsidized competitor. Now, the Commission proposes to “exclude from the offer of model-based support any census block that is served by a facilities-based terrestrial competitor offering fixed residential voice and broadband services that meet the Commission’s service requirements,” whether it is served by a subsidized or unsubsidized competitor.³⁰

NRECA opposes the proposal to exclude areas that are served by subsidized competitors. While the Commission raises a concern about potential overbuilding of price cap carrier networks, this proposal has the practical effect of insulating subsidized price cap carriers from competition and would enable these carriers to continue to provide 4/1 Mbps service. Those

²⁹ *FNPRM* at 174-178.

³⁰ *FNPRM* at 174.

relatively slow speeds should not be part of the universal service broadband infrastructure requirements for the 21st century insofar as they would prevent bidders in a competitive bidding process to provide 10/1+ Mbps to such locations.

In addition, NRECA agrees with the Commission's view that "excluding areas that currently may have fixed residential voice and broadband services may make it more difficult for bidders in a competitive process to develop bids for a network that is cost-effective to build;" and that "it is possible that the amount of support provided for the unserved census blocks alone may be insufficient to build out to those census blocks on a stand-alone basis."³¹ In this way, excluding subsidized areas may have the domino effect of preventing other areas from being served by competitors.

NRECA believes that it is in the public interest for the Commission to advance policies that encourage competition from entities like electric cooperatives that want to provide robust, affordable and reliable services to unserved and underserved areas. By excluding census blocks that are served by subsidized providers, price cap carriers will be under no pressure to improve service to those areas and to expand coverage to unserved locations. Instead, price cap carriers will continue to build out at the fringe of their networks, if at all, leaving other locations in the census block unserved. The overriding goal of the FCC's National Broadband Plan – to ensure that all Americans have access to, and use, broadband services – will not be achieved unless all locations, including locations within electric cooperative's service territories, are also provided with 10/1+ Mbps service.

The Commission is also seeking comment on whether it should exclude from Phase II support only those areas where the current provider certifies that it is able and willing to continue

³¹ *FNPRM* at 176.

providing terrestrial fixed residential voice and broadband services meeting the Commission's requirements for a specified period of time, such as five years.³² According to the Commission, this would address concerns raised by some parties that a subsidized provider may cease to provide service once support is phased out, leaving consumers in such areas without service.

NRECA submits that this proposal to require carriers to certify that they will not abandon areas once funding is phased out amounts to a regulatory Band-Aid that will not begin to cover the damage that will occur if subsidized areas are made ineligible for competitive bids for Phase II support. The Commission should open these census blocks to competition by entities such as electric cooperatives, and rely on competition rather than self-certification to protect consumers in unserved and underserved areas. The electric cooperative's business model typically allows for relatively long time horizon for return on investment and provides incentives for better quality of service compared to those of other commercial communications service providers. Because electric cooperatives are member owned and governed, there is only one focus for cooperatives – providing robust, reliable, affordable service. There is no pressure to deliver returns to shareholders as the customer is the shareholder. Electric cooperatives typically invest in long-term infrastructure to serve their member-owners with payback periods extending 10-15 years or more. As critical infrastructure industry participants, electric cooperatives have the experience and expertise to build out infrastructure projects. Thus, they have the technical ability to provide affordable, robust and reliable broadband services and they could realistically expect to see relatively very high take rates, low churn and high overall customer satisfaction. The unique non-profit status and lengthy time horizon for return on investment provide electric cooperatives with a unique framework to economically allow for actual build outs supported by

³² *FNPRM* at 177.

Phase II support.

Exclusion of Phase II support based on a self-certification may also tie a community to older technology that cannot reasonably be expected to close the digital divide. The Commission should not exempt areas and communities without first seeking their view. As such, the Commission should strongly consider the voice of the community in examining which entities should be allowed to provide voice and broadband services using next-generation technology with the assistance of Phase II support.

For these reasons, NRECA believes that the current provider should be required to make a certification that they will not abandon areas once funding is phased out, that the certification cannot be used to make an area ineligible for competitive bids for Phase II support, and that the certification should not trump the voice of a community as the Commission examines which entities should be allowed to serve with the assistance of Phase II support.

VI. AREAS FOR WHICH A RURAL BROADBAND EXPERIMENT FORMAL PROPOSAL IS SUBMITTED SHOULD BE REMOVED FROM A PRICE CAP CARRIER'S STATE-LEVEL COMMITMENT

The Commission seeks comment on whether an indication of potential competitive entry through a rural broadband experiment formal proposal for an area should be grounds for removing that area from a carrier's state-level commitment.³³ In other words, the price cap carrier would not qualify to exercise the right of first refusal³⁴ that gives them an exclusive opportunity to retain funding during the first five years of Phase II support. Instead, a price cap carrier, the applicant submitting the formal proposal and any other eligible provider, would compete through the competitive bidding process for model-based support for that area.

³³ *FNPRM* at 220.

³⁴ The right of first refusal was provided to price cap carriers electing a state-wide commitment to provide voice and broadband. See, *USF/ICC Transformation Order* at paras. 164-166.

As of May 31, 2014, 1,024 expressions of interest regarding the rural broadband experiments were submitted from a wide range of entities.³⁵ Approximately 11 percent were from electric utilities.³⁶ According to the Commission, the submission of a formal proposal will “provide strong evidence that at least some entities are prepared to extend robust broadband in a given high-cost area for an amount less than or equal to the amount of model-based support that would be provided to a price cap carrier through the state-level commitment process for that area.”³⁷

NRECA strongly believes that the areas for which a rural broadband experiment formal proposal is submitted should be removed from a price cap carrier’s state-level commitment. First, by removing the right of first refusal, a price cap carrier, the applicant submitting the formal proposal and any other eligible provider, would then be able to participate in the competitive bidding process for model-based support for that area. By removing the right of first refusal, innovative technology solutions and greater efficiency in the use of universal service resources will be promoted because relatively higher upstream and downstream speeds may be provided than would have existed under the right of first refusal regime where speeds as low as 4/1 Mbps might be provided. Moreover, as noted by the Commission, the vast majority of the expressions of interest extending fiber-based technologies propose to deploy fiber-to-the-premise. Therefore, NRECA believes that if the Commission removed such areas from the state-level commitment, such action would have the likely effect of resulting in greater deployment of broadband to unserved and underserved areas than would be the case under the current Connect America framework which may allow for a right of first refusal in those areas.

³⁵ *Rural Experiments Order* at para. 5.

³⁶ *Id.*

³⁷ *FNPRM* at 220.

Second, a price cap carrier will not be foreclosed from being able to leverage scale – rather than having a set of census blocks, or portions of census blocks, form a potentially unsustainable “high-cost island” served by one provider in the midst of a much larger area served by the price cap carrier. This is so because a price cap carrier could continue to win support through the competitive bidding process instead of through the exercise of a right-of-first-refusal.

Finally, given the relatively low likelihood of any particular applicant receiving an award for a rural broadband experiment, diverse projects that are potentially ripe for such awards may never be submitted if there exists a high expectation that a price-cap carrier will retain a right of first refusal for such areas. NRECA also wishes to reiterate that competing for a chance to provide voice and broadband services in unserved and underserved locations is a once in a generation opportunity to close the digital divide.³⁸ A more inclusive approach to solving this issue will allow for a better allocation of scarce universal service funds at relatively higher broadband service performance levels.

The Commission also seeks comments on what conditions the formal proposal would have to meet in order to remove a geographic area from a price cap carrier’s state-level commitment.³⁹ If a formal proposal is timely filed and sufficiently completed such that the applicant is eligible to compete for the funds, then the Commission should deem the formal proposal *ipso facto* meritorious to remove the area it covers from the price cap carrier’s state-level commitment.

³⁸ See also, testimony of Robert L. Hance, President and Chief Executive Officer, Midwest Energy Cooperative before the U.S. House Agriculture Subcommittee on Livestock, Rural Development and Credit (July 29, 2014) (available at <http://agriculture.house.gov/sites/republicans.agriculture.house.gov/files/pdf/hearings/Hance140729.pdf>).

³⁹ *FNPRM* at 220-221.

VII. THE PARAMETERS OF THE PHASE II COMPETITIVE BIDDING PROCESS SHOULD INCENTIVIZE PARTICIPATION AND ADVANCE WELL DEFINED SELECTION CRITERIA

A. Multi-Round Bidding Process Is Appropriate

The Commission proposes use of a multi-round auction so that competitive bidders have the opportunity to reevaluate their bids in light of the actions of others.⁴⁰ According to the Commission, a “multi-round process may be especially important here so that bidders can reevaluate their deployment objectives in light of the demonstrated willingness of other bidders to build out broadband in an area.”⁴¹ NRECA wholeheartedly supports the Commission’s proposal to use a multi-round auction. When a bidder has more information about the market for voice and broadband service offerings in a location, the quality of the bids should increase which in turn should lead to better long-term realized projects that will benefit consumers.

B. The Selection Criteria Is Critical

The Commission proposes that the competitive bidding process is implemented in a way that identifies those provisionally winning bids that propose service that substantially exceeds the Commission’s service standards, for an amount per location equal to or less than the model-determined amount of support for the relevant geographic areas.⁴² As previously noted, 10 Mbps downstream and 1+ Mbps upstream should be the minimum benchmark for support. NRECA believes that a service offering of at least 25 Mbps downstream and 5 Mbps upstream should be deemed to be a service that “substantially exceeds” the Commission’s standards. This offering matches the Commission’s framework for the majority of the rural broadband experiments to be

⁴⁰ *FNPRM* at 230.

⁴¹ *Id.*

⁴² *FNPRM* at 231.

conducted in price cap territories.⁴³ Moreover, in order to qualify for such a preference, the Commission should not require a bidder to commit to offering service that substantially exceeds these standards to 100 percent of all funded locations.⁴⁴ In addition, in order to select among competing bidders that otherwise offer comparable service standards, NRECA recommends that the Commission additionally use a cost-effectiveness criterion. Cost effectiveness could be defined as the ratio of the speed offered to the requested support. In this way, Phase II support would efficiently flow to those entities that maximize the support in terms of the amount of speed that can be generated from that support.

NRECA also urges the Commission to consider providing funding for geographic coverage across state lines. Many electric cooperatives have service territories that cross state lines.⁴⁵ As such, Phase II support for geographic coverage across state lines is critically important for electric cooperatives. In addition, the Commission should incorporate into its auction design consideration of the expressed preferences of the affected community for service of a particular type or quality.⁴⁶ NRECA suggests that a letter of support by such an affected community could be part of any bidding package for the competitive bidding process. Finally, NRECA recommends that the Commission should consider providing bidding credits for areas that are located in persistent poverty counties and are geographically sparsely populated. NRECA suggests a 10% bidding credit be awarded to bidders that propose to offer service in such locations.

⁴³ *Rural Experiments Order* at para 26 (\$75 million out of \$100 million made available to recipients offering at least one service plan that provides 25 Mbps downstream/5 Mbps upstream).

⁴⁴ See Section IV *infra*, suggesting that support to 95% of locations within a census block may be appropriate.

⁴⁵ Approximately 90 distribution co-ops and 22 G&Ts have service in more than one state.

⁴⁶ *FNPRM* at para. 231.

VIII. CONCLUSION

NRECA reiterates its support for the Commission's goal of providing Phase II support so that recipients can deploy broadband into locations which are currently unserved or underserved. Increasing the broadband benchmarks to a minimum of 10/1+ Mbps and allowing flexibility to deploy to 95% of all locations, along with a commensurate reduction in funding or allowing substitutions of a certain percentage of unserved locations within partially served census blocks for locations within funded census blocks could enable more efficient network deployments.

Additionally, areas for which a rural broadband experiment formal proposal is submitted should be removed from a price cap carrier's state-level commitment. By removing the right of first refusal, a price cap carrier, the applicant submitting the rural broadband experiment formal proposal and any other eligible provider, would then be able to participate in the competitive bidding process for model-based support for that area. Competing for a chance to provide voice and broadband services in unserved and underserved locations is a once in a generation opportunity for entities such as electric cooperatives to close the digital divide. A more inclusive approach to solving this issue will allow for a better allocation of scarce Phase II funds at relatively higher broadband service performance levels.

Respectfully submitted,
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